

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
MARCH 9, 2004

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: MARVIN DeBUCK, CHAIRPERSON
BRIAN FLORENCE, SECRETARY
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
DAWN SLOSSON

ABSENT: NONE.

ALSO PRESENT: COLLEEN O'CONNER, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
JAMES GELIOS, TOWNSHIP DEPUTY CLERK
(Additional attendance record on file with Clerk)

Call Meeting to Order

Chairman DeBuck called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary FLORENCE called roll. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. (Note: All fees have been received and all property notices were notified by mail)

MOTION by GALLAGHER seconded by FLORENCE to approve the March 9, 2004 agenda as presented.

MOTION carried.

4. Approval of the February 2, 2004 Special Meeting Minutes

MOTION by FLORENCE seconded by POPOVSKI to approve the Special Meeting Minutes of February 2, 2004 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number / Petitioner	Zoning Ordinance Section No.
5. Franco Mancini Permanent Parcel No. 08-06-200-046	10.0704 (A)(3)(d)
6. Salvatore DiMercurio Permanent Parcel No. 08-08-101-003	10.1505(D)(1)
7. Vito Biondo and Emanuela Maggio Permanent Parcel No. 08-15-403-001	10.0704(D)(1)
8. Bruce and Joan Austin Permanent Parcel No. 08-05-130-030	14.27(2)
9a. GTR Builders Permanent Parcel No. 08-23-100-026.	Revisions to the Meeting Minutes of September 9, 2003; Variance Request form the Zoning Ordinance Sections: 10.0704A3b, 10.0704A3d & 10.0335

AGENDA ITEMS:

5. VARIANCE REQUEST FROM ZONING ORDINANCE:
Section 10.0704(A)(3)(d)-Request allowance to develop a lot that exceeds the 3 to 1 ratio; Located south of 26 Mile Road and west of Romeo Plank Road in the proposed Bellagio Subdivision; Section 6; Franco Mancini, Petitioner. Permanent Parcel No. 08-06-200-046.

Chairman DEBUCK read the Planning Consultants findings and recommendations dated March 4, 2004 as follows:

SUBJECT: VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:

Section 10.0704 A 3 d - request allowance to develop a lot that exceeds the 3 to 1 ratio.

Located south of 26 Mile Road and west of Romeo Plank Road in the proposed Bellagio Subdivision (specifically lot 95)

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Petitioner: Franco Mancini

Permanent Parcel No. 08-06-200-046

The petitioner is requesting allowance to create lot 95 of the proposed Bellagio Subdivision.

Lot 95 in the proposed plat lies adjacent to the Clinton River in the south portion of the plat. The lot is bounded by the river on the south and property owned by the Consumer Power Company on the north. The parcel is approximately 80 feet wide and is otherwise incorporated into the plat, albeit it being a very unusually long parcel.

Lot 95 will have frontage on a cul-de-sac and otherwise meet the terms of the Zoning Ordinance.

RECOMMENDATION:

It is recommended that the variance request be approved. The parcel in question cannot be otherwise incorporated into the plat. The shape of the parcel in question was not created by the petitioner and appears to be an appendage to the original parcel purchased by the petitioner.

Petitioner Present: Franco Mancini of Masters Development

Member GALLAGHER discussed with Mr. Mancini the complications involved with the proposed lot.

Public Portion: None.

MOTION by GALLAGHER seconded by POPOVSKI to close the public portion at 7:06 P.M.

MOTION carried.

MOTION by GALLAGHER seconded by POPOVSKI to approve the Variance Request of Section 10.0704 (A)(3)(d) – Request allowance to develop a lot that exceeds the 3 to 1 ratio; Located south of 26 Mile Road and west of Romeo Plank Road in the proposed Bellagio Subdivision; Section 6; Franco Mancini, Petitioner. Permanent Parcel No. 08-06-200-046. The Variance Request was approved based upon the following reasons:

It is recommended that the variance request be approved. The parcel in question cannot be otherwise incorporated into the plat. The shape of the parcel in question

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was not created by the petitioner and appears to be an appendage to the original parcel purchased by the petitioner.

MOTION carried.

6. VARIANCE REQUEST FROM ZONING ORDINANCE:
Section 10.1505(D)(1)-Request to reduce front yard setback from 75 feet to 62 feet; Located on the south side of 25 Mile Road approximately 212 feet east of Garfield Road; Section 8; Salvatore DiMercurio, Petitioner. Permanent Parcel No. 08-08-101-003.

Chairman DEBUCK read the Planning Consultants findings and recommendations dated March 4, 2004 as follows:

SUBJECT: VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:
Section 10.1505 D 1 - request to reduce front yard from 75' to 62'

Located on the south side of 25 Mile Road east of Garfield.

Petitioner: Salvatore DeMercurio

Permanent Parcel No. 08-08-101-003

The petitioner is requesting a setback variance to allow a residence to remain on a parcel with a 62' setback rather than the required 90' setback (75' if commercial). It appears to be the intention of the petitioner to combine the parcel in question with the adjacent parcel to the west. It would appear that the two parcels would then be developed as zoned for C-1 purposes.

The two parcels are zoned C-1 with the corner parcel vacant.

RECOMMENDATION:

It is recommended that the variance request be approved with the understanding that the house will be removed prior to the combination being approved.

Mr. Schmeiser, Community Planning Consultant, reviewed that the findings as discussed should be revised adding the condition that the house be removed prior to any Site Plan Application submittals.

Petitioner Present: Bill Thompson of Lehner Associates Inc.

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Mr. Thompson stated that the intent of the petitioner is to either rezone the property or combine the property.

Mr. Thompson further stated that the petitioner would have no problem with adding the condition that the house be removed prior to any Site Plan Application submittals.

Colleen O'Connor, Township Attorney, discussed with Mr. Thompson her concerns as to the reasons why the house can not be removed at this time.

Chairman GALLAGHER along with Mr. Schmeiser reviewed their concerns with approving this request adding the condition that the house remains on the site until a Site Plan is submitted. Mr. GALLAGHER and Mr. Schmeiser expressed their concerns as to how the Township could control the uses of the house in the mean time.

Mrs. O'Connor informed the petitioner that the proposal will need additional research prior to any actions at this point.

Mr. Thompson requested that the item be tabled at this time, so that the Township Attorney can further review and research the proposal.

Public Portion: None.

MOTION by FLORENCE seconded by SLOSSON to close the public portion at 7:18 P.M.

MOTION carried.

MOTION by GALLAGHER seconded by FLORENCE to table this item, at the petitioners request, so that the Township Attorney can further research the proposal and the issues involving the house located on the land for the Variance Request of Section No. Section 10.1505(D)(1)-Request to reduce front yard setback from 75 feet to 62 feet; Located on the south side of 25 Mile Road approximately 212 feet east of Garfield Road; Section 8; Salvatore DiMercurio, Petitioner. Permanent Parcel No. 08-08-101-003.

MOTION carried.

7. **VARIANCE REQUEST FROM ZONING ORDINANCE:**
Section 10.0704(D)(1)-Request to allow a 3.70 foot encroachment into the front yard setback to construct columns and wing walls for entry steps to front patio; Located on the northeast corner of Flyer and Pinecone Drives; Section 15; Vito Biondo and Emanuela Maggio, Petitioner. Permanent Parcel No. 08-15-403-001.

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Chairman DEBUCK read the Planning Consultants findings and recommendations dated March 4, 2004 as follows:

SUBJECT: VARIANCE REQUEST FROM PROVISION OF THE ZONING
ORDINANCE;
Permission to vary section:

Section 10.0704 D 1 - request to allow a 3.70' encroachment into the front yard.

Permanent Parcel No. 08-15-403-001 (lot 120 of Fairways of Macomb No. 2)

Located on the northeast corner of Flyer and Pinecone Drives.

Address: 51730 Flyer Drive

Petitioners: Vito Biondo and Emanuela Maggio

The petitioner is requesting a variance to allow columns and wing walls to remain in the front yard with a 21.3' setback rather than 25' feet as required by the Zoning Ordinance. The property in question as currently existing is a parcel which meets the dimension requirements of the Zoning Ordinance as approved by the Township.

The columns and walls were built without a permit and extend into the front yard.

RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property for residential purposes. Other single family structures and uses have been developed in the area with proper setbacks and have been so constructed in conformance with the requirements. Each single family structure in the area that has received a building permit on new parcels has done so in conformance with the 25' front yard setback. The fact that there are many single family structures built in the area is evidence that the 25' front yard setback would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the area or on streets planned in any new plats. The other owners are or will be required to comply with the 25' front yard setback requirement. As a result the other property owners

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do not have the opportunity to make use of 3.70 additional feet to the front of the structure.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 25' from the front property line. For example, there are no significant grade differences or natural features such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to reducing the front yard setback by approximately 15 %.

Petitioner Present: Vito Biondo and Emanuela Maggio

Member GALLAGHER reviewed with the petitioners that the area in question appears as an after thought development.

Chairman DEBUCK reviewed with the petitioners that the original plans did not include the structure of the building as it appears.

Colleen O'Connor, Township Attorney, questioned the petitioners as to their relationship with the builder by the name of Biondo. The petitioners replied that they have no relation with the builder.

Public Portion: None.

MOTION by FLORENCE seconded by GALLAGHER to close the public portion at 7:19 P.M.

MOTION carried.

MOTION by GALLAGHER seconded by FLORENCE to deny the Variance Request of Section 10.0704(D)(1)-Request to allow a 3.70 foot encroachment into the front yard setback to construct columns and wing walls for entry steps to front patio; Located on the northeast corner of Flyer and Pinecone Drives; Section 15; Vito Biondo and Emanuela Maggio, Petitioner. Permanent Parcel No. 08-15-403-001. The Variance Request was denied based upon the following reasons:

1. **Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property for residential purposes. Other single family structures and uses have been developed in the area with proper setbacks and have been so constructed in conformance with the requirements. Each single family structure in the area that has received**

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a building permit on new parcels has done so in conformance with the 25' side yard setback. The fact that there are many single family structures built in the area is evidence that the 25' sideyard setback would not be unnecessarily burdensome.

- 2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in the area or on streets planned in any new plats. The other owners are or will be required to comply with the 25' front yard setback requirement. As a result the other property owners do not have the opportunity to make use of 3.70 additional feet to the front of the structure.**

There is nothing unusual about the parcel in question that sets it apart from other parcels in area. There is nothing to prevent any part of the front yard from being maintained 25' from the front property line. For example, there are no significant grade differences or natural features such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

- 3. The variance would amount to reducing the front yard setback by approximately 15 %.**

MOTION carried.

- 8. VARIANCE REQUEST FROM ZONING ORDINANCE:**
Section 14.27(2)-Request to allow a fence to remain in a 25' setback area; Located on the northeast corner of Country Club and Birkdale Drives, (east of Romeo Plank); Section 5; Bruce and Joan Austin, Petitioner. Permanent Parcel No. 08-05-130-030.

Chairman DEBUCK read the Planning Consultants findings and recommendations dated March 4, 2004 as follows:

SUBJECT: Fence VARIANCE; Permission to vary section: 14.27 2 - to allow a fence to remain in a 25' setback area.

Located on the northeast corner of Country Club and Birkdale Drives; (east of Romeo Plank). Petitioner: Bruce and Joan Austin

Permanent Parcel No. 08-05-130-030 Lot 181 of County Club Village of North.

The petitioner is requesting to allow a fence to remain on the 25' setback area.

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The Ordinance provides that where a rear yard backs to a side yard that a 25' clear vision zone be provided. Such a provision is necessary where a garage on the lot where a rear yard backs to a side yard will have enough clear vision to protect pedestrians from drivers leaving the garage.

In this case the garage on the adjacent lot has a sufficient 35' distance from the rear property line to be able to provide said clear vision zone.

RECOMMENDATION:

It is recommended that the variance request be approved, since the distance of the garage setback meets the spirit and intent of the Ordinance.

Jerome R. Schmeiser, Community Planning Consultant, explained in detail the location of the home on the site regarding ordinance pertaining to clear vision zone.

Petitioner Present: Joan Austin, 53606 Birkdale Drive, Macomb Township.

Public Portion: None.

MOTION by POPOVSKI seconded by SLOSSON to close the public portion at 7:34 P.M.

MOTION carried.

MOTION by FLORENCE seconded by GALLAGHER to approve the Variance Request of Section 14.27(2)-Request to allow a fence to remain in a 25' setback area; Located on the northeast corner of Country Club and Birkdale Drives, (east of Romeo Plank); Section 5; Bruce and Joan Austin, Petitioner. Permanent Parcel No. 08-05-130-030. The Variance Request was approved based upon the following reasons:

The distance of the garage setback meets the spirit and intent of the Ordinance.

MOTION carried.

OLD BUSINESS:

- 9a. Revisions to the Zoning Board of Appeals September 9, 2003 Meeting Minute Motions; Variance Request From the Zoning Ordinance Sections:
- 10.0704A3b-Request to reduce width of interior lot
 - 10.0704A3d-Request to exceed 3 to 1 width to depth ratio
 - 10.0335-Request to reduce public street frontage to 60 feet

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Located on the southeast corner of 23 Mile Road and Card Road; Section 23;
GTR Builders, Petitioner. Permanent Parcel No. 08-23-100-026.

Mr. Schmeiser, verbally reviewed the language added to the Meeting Minutes of September 9, 2003 that will reflect in all motions pertaining to the variance request for Permanent Parcel No. 08-23-100-026 as follows: *"Furthermore, if construction access becomes unavailable through The Rivers Estates then access must be obtained via the construction of a bridge to the west to Card Road."*

Mrs. O'Connor stated that the information reviewed by Mr. Schmeiser was agreed upon and part of the Boards action at the meeting of September 9, 2003.

10. New Business: None.

11. Planning Consultants Comments: None.

ADJOURNMENT

MOTION by GALLAGHER seconded by POPOVSKI to adjourn the meeting at 7:37 P.M.

MOTION carried.

Respectfully submitted,

Marvin DeBuck, Chairman

Brian Florence, Secretary
Gabrielle M. Baker, Recording Secretary